

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SKYLINE POTATO COMPANY, INC.,
A Colorado Corporation,

Plaintiff,

vs.

No. CIV 10-0698 JB/RHS

TAN-O-ON MARKETING, INC. d/b/a TMI;
a Colorado corporation with a principal place
of business in New Mexico, HI-LAND POTATO
COMPANY, INC., a Colorado corporation;
GERALD R. ANDERSON, in his individual
capacity and As Director/Shareholder of Tan-O-On
Marketing Inc., JULIE A. ANDERSON, in her
individual capacity and as Director/Shareholder
of Tan-O-On Marketing Inc., MARK LOUNSBURY,
in his individual capacity and as Director/Shareholder
of Tan-O-On Marketing Inc., BILL METZ, in his
individual capacity and As Director/Shareholder of
Tan-O-On Marketing Inc., and CARL WORLEY,
in his individual capacity, as Director/Shareholder of
Tan-O-On Marketing Inc., and as Director/Shareholder
Hi Land Potato Company,

Defendants,

and

FOLSOM FARM CORPORATION,
POTANDON PRODUCE, L.L.C.,
MART PRODUCE CORPORATION,
BILLINGSLEY PRODUCE SALES,
INC., ALSUM PRODUCE, INC., and
PETERSON BROS. RIVER VALLEY
FARMS, INC.,

Intervening Plaintiffs,

vs.

TAN-O-ON MARKETING, INC. d/b/a TMI, and
HI-LAND POTATO COMPANY, INC.,

Defendants,

and

TAN-O-ON MARKETING, INC. d/b/a TMI;
GERALD R. ANDERSON, JULIE A. ANDERSON,

Third-Party Plaintiffs,

vs.

HI-LAND POTATO COMPANY, INC.;
and CARL WORLEY, RPE, INC.
and RUSSELL WYSOCKI

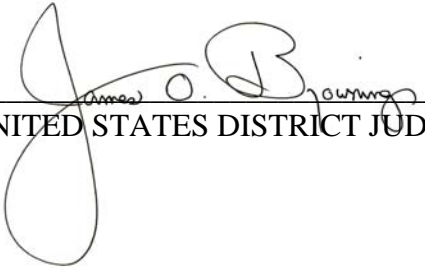
Third-Party Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Tan-O-On Marketing Inc.'s Motion to Withdraw Exhibit, filed February 22, 2012 (Doc. 115)("Motion"). The Court held a hearing on April 13, 2012. The primary issue is whether the Court should permit Defendant Tan-O-On-Marketing, Inc. to withdraw the document labeled Exhibit "D" attached to Tan-O-On Marketing's Response to Hi-Land Potato Company, Inc. and Carl Worley's Motion to Dismiss Fraud Claims and Dismissal of Individual Claims by Andersons, filed February 21, 2012 (Doc. 114)("Response to Motion to Dismiss"). No parties have filed a written response to the Motion. Failure to file a written response to a motion constitutes consent to granting the motion. See D.N.M.LR-Civ. 7.1(b) ("The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion."). At the April 13, 2012 hearing, the parties stated that they did not oppose the Motion. See Transcript of Hearing at 54:13-21 (taken

April 13, 2012)(Court, Esquivel, Bohnhoff, Feuchter).¹ Because no parties oppose the Motion, the Court will grant the Motion.

IT IS ORDERED that Tan-O-On Marketing's Motion to Withdraw Exhibit, filed February 22, 2012 (Doc. 115), is granted.


UNITED STATES DISTRICT JUDGE

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-- and --

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¹The Court's citations to the transcript of the hearing refer to the court reporter's original, unedited version. Any final transcript may contain slightly different page and/or line numbers.

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